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BEFORE THE ARIZONA CORPORATION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

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AZ CORP COMMISSION
DOCKET CONTROL

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IN THE MATTER OF THE FORMAL
COMPLAINT OF THOMAS PATZKE,

DOCKET NO. E-01933A-12-0416

COMPLAINANT,

PROCEDURAL ORDER

vs.

TUCSON ELECTRIC POWER COMPANY,

RESPONDENT.

BY THE COMMISSION:

On September 24, 2012, Thomas Patzke filed a formal complaint with the Arizona Corporation Commission ("Commission") against Tucson Electric Power Company ("Complaint").

On October 19, 2012, Tucson Electric Power Company ("TEP" or "Company") filed its Answer to Formal Complaint and Motion to Dismiss.

Pursuant to a Procedural Order docketed November 29, 2012, a procedural conference was held on December 13, 2012. During the procedural conference, the parties stated that they had not resolved the matter. TEP's Motion to Dismiss was taken under advisement pending Mr. Patzke's response to the Motion to Dismiss and the Company's Reply.

On December 24, 2012, Mr. Patzke filed his Answer to TEP's Motion to Dismiss ("Response"), and TEP filed its Reply to Complainant's Response on January 18, 2013.

Motion to Dismiss

In his Complaint, Mr. Patzke alleged that TEP violated the terms of the Company's 2011 Renewable Energy Credit Purchase program ("2011 RECPP"), approved by the Commission in Decision No. 72033 (December 10, 2010), and Up Front Incentive Renewable Energy Credit Purchase Agreement ("Purchase Agreement") when TEP refused to pay Mr. Patzke the total amount he believed he was entitled to as an up-front incentive ("UFI") for a 18.4 kWh solar electric system

1 installed at his residence by Technicians for Sustainability (“TFS”), a qualified installer. Mr. Patzke
2 claimed TEP still owed him \$4,256 under the terms of the 2011 RECPP and Purchase Agreement.

3 In its Answer, TEP asserted that the Complaint must be dismissed because it is legally
4 deficient and raises issues outside the Commission’s jurisdiction. TEP acknowledged that the
5 Commission generally has broad powers regarding “‘matters that fall within its constitutionally or
6 legislatively endowed authority,’”¹ but TEP also believed that the Commission lacked jurisdiction
7 over issues raised by the Complainant because they “‘are unrelated to or attenuated from those
8 matters over which the Commission has express constitutional or statutory authority [and] do not fall
9 within the Commission’s exclusive jurisdiction.’”²

10 In support of this assertion, TEP cited A.R.S. § 40-246(A), which states that a person may
11 bring a complaint against a public service corporation for violations of “any provision of law or any
12 order or rule of the commission....” TEP claimed that Mr. Patzke has not alleged any violations of
13 any Commission rule, decision or provision of law. According to TEP, the only violations of law Mr.
14 Patzke complained of relate to civil law claims for breach of contract and bad faith.³ TEP claimed
15 the Complaint also involves a disagreement between Mr. Patzke and TFS about the amount of UFI
16 due and asserted that the matter cannot be resolved without TFS’ joinder; since the Commission does
17 not have jurisdiction over TFS, the question of proper and adequate relief cannot be fully addressed.

18 The Company also noted the Purchase Agreement expressly states: “Venue for any dispute
19 arising hereunder shall be any court of competent jurisdiction located in Pima County, Arizona.”⁴
20 TEP asserted Mr. Patzke accepted these terms when he signed the Purchase Agreement, and since
21 none of his claims fall within Commission jurisdiction, Mr. Patzke’s choice of venue is improper.

22 Mr. Patzke disputed TEP’s assertions, claiming that the Complaint involved a public service
23 corporation and its policies and procedures as set forth in its Commission-authorized 2011 RECPP.
24 Mr. Patzke also denied that there is any current dispute between him and TFS, noting they had
25 resolved their disagreement some time ago.

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27 ¹ Answer to Formal Complaint and Motion to Dismiss, page 7, citing *Qwest Corp. v. Kelly*, 204 Ariz. 25, at 30, 59 P.3d 789, at 794
(App. 2002).

28 ² *Id.*

³ *Id.*

⁴ Answer to Formal Complaint and Motion to Dismiss, Exhibit 1, Purchase Agreement, page 7, Section 15.3.

1 **Resolution**

2 After review of the record in this matter, we conclude that the dispute between Mr. Patzke and
3 TEP arises from questions about the correct amount owed for the UFI under the 2011 RECPP; as
4 such, the Complaint is within the Commission’s jurisdiction. Calculation of the UFI based solely on
5 evidence of record to date raises a question not only about whether TEP may have underpaid Mr.
6 Patzke, but also about whether TEP may have overpaid him. The parties are advised that they should
7 be prepared to address both questions at hearing and, more specifically, the 2011 RECPP
8 requirements related to use of a qualified installer, and what amounts may reasonably be considered
9 as “system costs” under the 2011 RECPP, among other things.

10 **IT IS THEREFORE ORDERED that TEP’s Motion to Dismiss is denied.**

11 **IT IS FURTHER ORDERED that the hearing in this matter shall begin August 28, 2013, at**
12 **10:00 a.m., in Room 222, 400 West Congress Street, Tucson, Arizona.**

13 **IT IS FURTHER ORDERED that Mr. Patzke shall docket his pre-filed testimony and that**
14 **of his witnesses and an exhibit list with Docket Control no later than July 19, 2013.**

15 **IT IS FURTHER ORDERED that TEP shall docket the pre-filed testimony of its witnesses**
16 **and an exhibit list with Docket Control no later than August 16, 2013.**

17 IT IS FURTHER ORDERED that the Commission’s Utilities Division (“Staff”) does not need
18 to participate as a party or provide a witness in this matter at this time. Staff may be requested to
19 provide testimony at a later time if deemed necessary.

20 IT IS FURTHER ORDERED that the *Ex Parte* Rule (A.A.C. R14-3-113-Unauthorized
21 Communications) applies to this proceeding as the matter is set for public hearing.

22 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
23 of the Arizona Supreme Court and A.R.S. §40-243 with respect to practice of law and admission *pro*
24 *hac vice*.

25 ...

26 ...

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1 IT IS FURTHER ORDERED that that the Administrative Law Judge may rescind, alter,
2 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by
3 ruling at hearing.

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DATED this 17th day of June, 2013.


BELINDA A. MARTIN
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed
this 17th day of June 2013, to:

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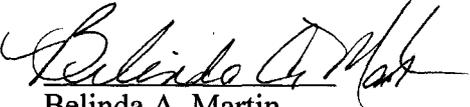
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